(3)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

Criminal Appeal No. 92 / 2001

Fittu s/o Bhuila Pahadi , Korwa , aged 30 years

Resident of Village - Vinayakpur , P.S. Shankargarh

Distt. Surguja (Chhattisgarh)

.....APPELLANT

VERSUS

The State Of Chhattisgarh

.....RESPONDENT

CRIMINAL APPEAL UNDER SECTION 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

Smt. Mehta

R. to A/R

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.952/ सन् 200/

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

31-3-2006

Mr. Neeraj Kumar Mehta, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction and order of sentence dated 8-8-2001 passed by the Sessions Judge, Surguja, in Sessions Trial No.3/99, whereby learned Sessions Judge after convicting the accused/appellant for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The case of the prosecution is that on 11-10-1998 in the evening at about 7 p.m. when Bhodgo (since deceased) along with Baiga & Marha after taking their meals at the residence of Itwari Bai was returning, on the way the accused met them and on account of old animosity he attacked Bhodgo with axe, as a result of the injuries sustained, Bhodgo became paralytic and he was treated in the Government Hospital, Ambikapur, from there he was referred to Medical College, Raipur and ultimately on 31-10-1998 Bhodgo succumbed to the injuries sustained by him. The matter was reported to Police Station: Shankargarh on 12-10-1998 by Bhodao himself on the basis of which F.I.R: (Ex.P-7) was registered under Section

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.952/ सन् 2001

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307 of the I.P.C. On 31-10-1998, the merg intimation (Ex.P-8) was given to the Police Station and based on that, the offence was converted into Section 302 of the I.P.C. Injuries of Bhodgo were examined by Dr. Smt. J. Kujur (PW-1) who prepared the injury report Ex.P-1. The dying declaration (Ex.P-19) of the deceased was recorded by Dr. Joseph Lakra (PW-5). Recovered articles were sent for examination to the Forensic Science Laboratory, Sagar, from where, report (Ex.P-16) was received and report of the Serologist (Ex.P-17) was also received. As per the report, weapon of offence axe was found stained with human blood. Post-mortem on the body of Bhodgo was conducted by Dr. Arvind Neralwar (PW-6) who prepared the post-mortem report (Ex.P-20). Panchnama Ex.P-21 of the body of Bhodgo was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn committed the case to the Sessions Judge, Surguja (Ambikapur).

The prosecution in order to establish charge against the accused examined six witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence, pleaded innocence and stated that he has been falsely implicated in the crime.

After hearing learned counsel for respective parties, learned Sessions Judge convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard learned counsel for the parties.

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक GA 952/ सन् 200 |

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The homicidal death of Bhodgo is not in dispute.

At the outset, Mr. Mehta, learned counsel for the appellant, argued that as per the medical evidence, Bhodgo died on account of septicaemia after 20 days of the incident, therefore, offence against the accused does not travel beyond Section 326 of the I.P.C., as he has been wrongly convicted under Section 302 of the I.P.C.

On the other hand, Mr. Bhatia, learned Panel Lawyer appearing for the State/respondent supported the judgment of the trial Court.

As far as involvement of the accused/appellant in the commission of crime is concerned, Baiga (PW-2) has stated that on the fateful day he along with Bhodgo and Marha went to take meal on the occasion of Nawakhai, when they were returning, accused Fitu met them on the way and attacked Bhodgo with axe as a result of which Bhodgo fell down and the accused again assaulted him with the axe. The evidence of this witness has been corroborated by the circumstantial evidence i.e. the dying declaration (Ex.P-19) made by the deceased before Dr. Joseph Lakra (PW-5) who has stated that on 12-10-1998 he recorded the dying declaration (Ex.P-19) in which Bhodgo had categorically stated that the accused assaulted him with the axe. Therefore, in view of the dying declaration and the evidence of Baiga (PW-2), involvement of the accused/appellant in the crime in question is established.

Now, coming to the question, on facts what offence was made out against the accused, Dr. Smt. J. Kujur (PW-1) has stated that on 12-10-1998 she

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.952/ **सन्** 200

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examined the injuries of the accused and noticed as many as five injuries. Looking to the nature of injury Nos.1 to 3, she reserved her opinion about those injuries till the receipt of X-ray report and advised for X-ray. Injury Nos. 4 & 5 were simple in nature. It is admitted position that no X-ray report is placed on record by the prosecution. Dr. Kujur has not stated that injuries on the body of the deceased were sufficient in the ordinary course of nature to cause death. Dr. Arvind Neralwar (PW-6) who conducted post-mortem on the body of Bhodgo has stated that the deceased died on account of septicaemia and syncope. The accused died after 20 days of the incident and it is admitted position that the accused died on account of septicaemia.

Therefore, from the above evidence, the prosecution has failed to establish that the accused assaulted the deceased with intention to cause death, as the deceased died after 20 days of the incident that too on account of septicaemia. In the circumstances, we are of the considered opinion that offence against the accused does not travel beyond Section 304 Part-II of the I.P.C. The manner in which the accused assaulted the deceased with axe, knowledge of the accused can be attributed that while attacking the deceased with axe, the accused was having the knowledge that he may likely to cause the death of the deceased.

We are fortified in our opinion by the judgment of the Apex Court in the matter of **Shanmugam alias Kulandaivelu v. State of Tamil Nadu** reported in **AIR 2003 Supreme Court 209** in which the Court held that "*Accused in a petty quarrel armed with spear stabbed deceased on his abdomen and chest -- Victim*

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक G.A.952/ सन् 2001

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died a week after the incident, out of septicaemid'. The Court further held that "intention to cause severe bodily injuries has to be necessarily imputed to accused" and offence against the accused under Section 304 Part-I of the I.P.C. was made out.

In the matter of **Ganga Dass alias Godha vs. State of Haryana** reported in **1994 Supp (1) Supreme Court Cases 534**, the Apex Court held that "*Single head injury caused by iron pipe -- Deceased dying 18 days later due to septicaemia and other complications -- Accused cannot be said to have intended to cause death or that particular injury -- He is liable to be convicted under S. 304 Pt. II instead of S. 302*'.

Accordingly, conviction and sentence imposed on the accused/appellant under Section 302 of the I.P.C. cannot be sustained. The appeal filed by the accused/appellant partly succeeds. His conviction and sentence imposed under Section 302 of the I.P.C. are set aside and he is acquitted of that charge, instead thereof, he is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for eight years.

Parties are entitled for certified copy of this order.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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